

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
ADAM PLOTCH,

Plaintiff,

-against-

US BANK NATIONAL ASSOCIATION,  
as Trustee for Asset Backed Funding Corporation,  
Asset Backed Certificates, Series 2006-HE1,

Defendants.  
-----X

**VERIFIED COMPLAINT**

Docket No. 21-cv-6078

Subject Premises:  
70-85A Park Drive East  
Flushing, New York  
Block 6548 Lot 1241

134 Jewel Avenue, Unit G078,  
Flushing, New York  
Block 6548 Lot 1078

Plaintiff Adam Plotch (“**Plaintiff**”), by and through his attorneys, Rosenberg Fortuna & Laitman, LLP, as and for his Complaint against Defendant hereby alleges as follows:

**NATURE OF ACTION**

1. Plaintiff brings this action pursuant to Article 15 of the Real Property Actions and Proceedings Law of the State of New York (“**RPAPL**”) to compel a determination of claims to real property located at 70-85A Park Drive East, Flushing, New York [Block 6548, Lot 1241] and 134 Jewel Avenue, Unit G078, Flushing, New York [Block 6548, Lot 1078] (collectively, the “**Premises**”).

2. More specifically, Plaintiff seeks the cancellation and discharge of a certain mortgage encumbering the Premises, pursuant to RPAPL §1501(4) and RPAPL §1501(1).

**PARTIES**

3. Plaintiff, the exclusive owner in fee simple of the Premises, is an individual and citizen and domiciliary of the County of New York, State of New York.

4. Upon information and belief, Defendant US Bank National Association, as Trustee for Asset Backed Funding Corporation, Asset Backed Certificates, Series 2006-HE1 (“**US Bank**”) is a corporation organized and existing under the laws of the State of Ohio with a principal place of business in the County of Hamilton, State of Ohio.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over the subject matter of this action under 28 USC1332(a)(1) because the matter in controversy and the intended benefit or the value of the right being protected and the injury being averted exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

6. Venue is appropriate in this District pursuant to 28 USC 1391, as the Premises is located in the Eastern District of New York and because this is the District where a substantial amount of the activities forming the basis of the Complaint occurred.

#### **THE PREMISES**

7. Plaintiff is the exclusive owner in fee simple of the Premises, pursuant to a Referee’s Deed dated January 30, 2016 from Martha Taylor, Esq., Referee, as Grantor to Plaintiff, as Grantee, which Referee’s Deed was recorded in the Office of the City Register of the City of New York on March 15, 2016.

8. The Premises consists of a condominium unit (the Park Drive East address indicated above) and an appurtenant parking garage space (the Jewel Avenue address indicated above).

#### **AS AND FOR A FIRST CAUSE OF ACTION (RPAPL §1504(4))**

9. Plaintiff repeats and realleges each and every allegation contained in the paragraphs set forth above as if more fully set forth at length herein.

10. According to the land records of the Premises, on or about August 25, 2006, non-party Herman Chavez executed a mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for Accredited Home Lenders Inc. to secure the payment of a note (the “**Note**”) in the principal sum of \$275,000.00 with interest (the “**Mortgage**”).

11. The Mortgage was recorded in the Office of the City Register of the City of New York for the County of Queens on October 24, 2006 at CRFN 2006000594838.

12. The Mortgage was assigned to US Bank by assignment of mortgage dated February 19, 2009 and recorded in the Office of the City Register of the City of New York for the County of Queens on March 19, 2009 at CRFN 2009000081374.

13. According to Court records, on or about February 21, 2008, US Bank initiated a foreclosure action with respect to the Mortgage in the Queens County Supreme Court in an action under Index No. 4557/2008 (the “**2008 Foreclosure Action**”).

14. In the 2008 Foreclosure Action, US Bank alleged to be the then holder and owner of the Note and Mortgage.

15. US Bank was the holder and owner of the Note as of the commencement date of the 2008 Foreclosure Action.

16. In the Complaint in the 2008 Foreclosure Action, US Bank elected to declare the entire principal and interest balance secured by the Mortgage immediately due and payable.

17. Plaintiff is not a party to the 2008 Foreclosure Action.

18. There was no active notice of pendency of the 2008 Foreclosure Action of record when Plaintiff acquired and recorded its interest in the Premises.

19. The 2008 Foreclosure Action was dismissed on August 9, 2017 for US Bank's failure to comply with a conditional order of dismissal dated February 15, 2017.

20. The 2008 Foreclosure Action was restored by Order dated June 29, 2020.

21. However, US Bank's motion to substitute Plaintiff as a defendant in the 2008 Foreclosure Action was denied.

22. US Bank commenced an action against Plaintiff to foreclose the Mortgage on January 16, 2018 in Queens County Supreme Court under Index No. 700727/2018 (the "**2018 Foreclosure Action**").

23. The 2018 Foreclosure Action was discontinued with prejudice by Order dated June 25, 2021 and entered on June 28, 2021.

24. No claim to foreclose Plaintiff's fee interest in the Premises is currently pending.

25. Since the 2018 Foreclosure Action was discontinued with prejudice against Plaintiff, a foreclosure claim may not be re-asserted against Plaintiff.

26. US Bank claims or may claim to have or it appears by the public record that US Bank may claim some estate or interest in the Premises adverse to that of Plaintiff because of the Mortgage.

27. The Note and Mortgage and all indebtedness secured by the Note and Mortgage became due and payable not later than February 21, 2008.

28. The statute of limitations for the commencement of an action to foreclose the Mortgage or to bring any action on the Note for principal or for any interest thereon has expired.

29. Accordingly, the enforcement of the Note and the foreclosure of the Mortgage have become outlawed and barred by the expiration of the statute of limitations.

30. Any estate or interest that the US Bank ever had or claim to have had in the Premises or in any part thereof and any and all liens or encumbrances thereon that may have existed or to be claimed to have existed in favor of the US Bank are null and void and of no force and effect as against the estate and interest of the Plaintiff in and to the Premises and Plaintiff now holds these Premises in fee simple, absolute free and clear of any claim, lien or encumbrance arising from the Mortgage or the ownership thereof.

31. US Bank is known and is not an infant, mentally retarded, mentally ill or an alcohol abuser or under any other disability.

32. The judgment in this action will not affect a person not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise could afterward become entitled to a beneficial estate or interest in the Premises if no other person or entity has claimed or may claim any estate, trust or other interest in the Premises other than US Bank.

33. US Bank is not in possession of the Premises.

34. Plaintiff is entitled to the cancellation and discharge of the Mortgage as well as a determination that its interest in the Premises is free and clear of the same.

35. Plaintiff is similarly entitled to a declaration that US Bank, its successors and/or assigns, all persons or entities claiming under and/or acting in concert with US Bank is forever barred and precluded from asserting any claims to an estate, trust or other interest in the Premises.

**AS AND FOR SECOND CAUSE OF ACTION  
(Quiet Title Pursuant to RPAPL §1501(1))**

36. Plaintiff repeats and realleges each and every allegation contained in the paragraphs set forth above as if more fully set forth at length herein.

37. When Plaintiff purchased the Premises, the Mortgage was time-barred by the statute of limitations.

38. US Bank continues to claim an interest in the Premises adverse to the Plaintiff by virtue of the Mortgage and Assignment.

39. Plaintiff demands judgment, pursuant to RPAPL §1501(1), that Plaintiff acquired good title to the Premises that was free and clear from encumbrances, encroachments and material defects, including title free and clear of any lien, estate or interest in favor of US Bank, and that the title that Plaintiff obtained was marketable.

**WHEREFORE**, Plaintiff respectfully prays for judgment as follows:

a. On the first cause of action, that US Bank and every person claiming under it be forever barred from all claim to an estate or interest in the Premises; that it be adjudged and finally determined that the Plaintiff is the lawful owner and vested with an absolute and unencumbered title in fee to the Premises, free and clear of the Note and Mortgage; and that the Office of the Register of the City of New York be directed to cancel and discharge of record the Mortgage;

b. On the second cause of action, that US Bank and every person claiming under it be forever barred from all claim to an estate or interest in the Premises; that it be adjudged and finally determined that the Plaintiff is the lawful owner and vested with an absolute and unencumbered title in fee to the Premises, free and clear of the Note and Mortgage; and that the Office of the Register of the City of New York be directed to cancel and discharge of record the Mortgage; and

c. On all causes of action, that the Plaintiff recover its costs, disbursements and allowances against US Bank.

Dated: Garden City, New York  
November 1, 2021

**ROSENBERG FORTUNA &  
LAITMAN, LLP**

*Anthony R. Filosa*

By: \_\_\_\_\_

**ANTHONY R. FILOSA**

Attorneys for **Plaintiff**

666 Old Country Road, Suite 810

Garden City, New York 11530

(516) 228-6666

**TO: US BANK NATIONAL ASSOCIATION,  
as Trustee for Asset Backed Funding Corporation,  
Asset Backed Certificates, Series 2006-HE1  
Defendant  
c/o 3217 S. Decker Lake Drive  
Salt Lake City, Utah 84119**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
ADAM PLOTCH,

Plaintiff,

-against-

US BANK NATIONAL ASSOCIATION,  
as Trustee for Asset Backed Funding Corporation,  
Asset Backed Certificates, Series 2006-HE1,

Defendants.  
-----X

**ATTORNEY VERIFICATION**

Docket No. 21-cv-6078

Subject Premises:  
70-85A Park Drive East  
Flushing, New York

Block 6548 Lot 1241

134 Jewel Avenue, Unit G078  
Flushing, New York

Block 6548 Lot 1078

**ANTHONY R. FILOSA, Esq.**, an attorney at law, duly admitted to practice in the Courts of the State of New York and the United States District Court for the Eastern District of New York, affirms under penalties of perjury that:

I am the attorney for the Plaintiff, Adam Plotch, in the above-entitled action. I have read the foregoing Verified Complaint and know the contents thereof, and upon information and belief, I believe the matters alleged therein to be true. The reason this verification is made by me and not by the Plaintiff, Adam Plotch, is because the Plaintiff does not reside and is not employed in Nassau County, New York, the county in which I maintain an office. The source of my information and the grounds of my beliefs are privileged communications and/or a review of the documents contained in the file.

Dated: Garden City, New York  
November 1, 2021

**ROSENBERG FORTUNA &  
LAITMAN, LLP**

*Anthony R. Filosa*

By: \_\_\_\_\_

**ANTHONY R. FILOSA**  
Attorneys for **Plaintiff**  
666 Old Country Road, Suite 810  
Garden City, New York 11530  
(516) 228-6666